

## SENATE BILL No. 427

### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 16-21-2-6; IC 25-1-7; IC 25-1-9.

**Synopsis:** Health care practitioner board investigations. Requires a hospital board to report a disciplinary action against a physician to the medical licensing board. Provides that a person who files a complaint against a health care practitioner concerning a health care issue waives confidentiality of the person's health care records. Allows a board that regulates a practitioner to adopt rules concerning the prosecution of complaints and petitions for review of denial of applications. Amends the standards of practice for practitioners. Allows a board to impose a fine of up to \$5,000 for failing to comply with an order related to a narcotic drug. Establishes procedures for reporting a practitioner's conviction or plea to certain crimes.

**Effective:** July 1, 2005.

Miller

January 13, 2005, read first time and referred to Committee on Health and Provider Services.

C  
o  
p  
y



Introduced

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

## SENATE BILL No. 427

A BILL FOR AN ACT to amend the Indiana Code concerning professions and occupations.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 16-21-2-6 IS AMENDED TO READ AS  
2       FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 6. (a) The governing  
3       board shall report, in writing, to the ~~Indiana~~ medical licensing board of  
4       **Indiana** the results and circumstances of a final, a substantive, and an  
5       adverse disciplinary action taken by the governing board regarding a  
6       physician on the medical staff or an applicant for the medical staff if  
7       the action results in voluntary or involuntary resignation, termination,  
8       nonappointment, revocation, or significant reduction of clinical  
9       privileges or staff membership. The report shall not be made for  
10      nondisciplinary resignations or for minor disciplinary action, **such as**  
11      **actions based solely on the physician's failure to maintain records**  
12      **on a timely basis or failure to attend staff meetings.**

13      **(b) The report of a disciplinary action must be submitted to the**  
14      **medical licensing board of Indiana not later than thirty (30) days**  
15      **after the action is taken by the governing board. However, if the**  
16      **governing board determines that the physician represents a clear**  
17      **and immediate danger to public health and safety if allowed to**

2005

IN 427—LS 7824/DI 77+



C  
o  
p  
y

1 **continue to practice, the report must be submitted to the medical**  
 2 **licensing board of Indiana not later than twenty-four (24) hours**  
 3 **after the action is taken by the governing board.**

4 ~~(b)~~ **(c)** The governing board and the governing board's employees,  
 5 agents, consultants, and attorneys have absolute immunity from civil  
 6 liability for communications, discussions, actions taken, and reports  
 7 made concerning disciplinary action or investigation taken or  
 8 contemplated if the reports or actions are made in good faith and  
 9 without malice.

10 SECTION 2. IC 25-1-7-4 IS AMENDED TO READ AS FOLLOWS  
 11 [EFFECTIVE JULY 1, 2005]: Sec. 4. **(a)** All complaints must be  
 12 written and signed by the complainant and initially filed with the  
 13 director. Except for employees of the attorney general's office acting in  
 14 their official capacity, a complaint may be filed by any person,  
 15 including members of any of the boards listed in section 1 of this  
 16 chapter.

17 **(b) A person who files a complaint against a health care**  
 18 **professional concerning a health care issue waives confidentiality**  
 19 **of the person's health care records that are directly related to the**  
 20 **specific complaint filed.**

21 SECTION 3. IC 25-1-7-14 IS ADDED TO THE INDIANA CODE  
 22 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 23 1, 2005]: **Sec. 14. A board may adopt rules under IC 4-22-2**  
 24 **concerning:**

- 25 **(1) the filing and prosecution of complaints; and**  
 26 **(2) petitions for review of a denial of an application;**  
 27 **under this chapter, IC 4-21.5, and IC 25-1-9.**

28 SECTION 4. IC 25-1-9-4 IS AMENDED TO READ AS FOLLOWS  
 29 [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) A practitioner shall conduct  
 30 the practitioner's practice in accordance with the standards established  
 31 by the board regulating the profession in question and is subject to the  
 32 exercise of the disciplinary sanctions under section 9 of this chapter if,  
 33 after a hearing, the board finds:

- 34 (1) a practitioner has:  
 35 (A) engaged in or knowingly cooperated in fraud or material  
 36 deception in order to obtain a license to practice;  
 37 (B) engaged in fraud or material deception in the course of  
 38 professional services or activities; or  
 39 (C) advertised services in a false or misleading manner;  
 40 (2) a practitioner has been convicted of, **entered a guilty plea to,**  
 41 **or entered a plea of nolo contendere to** a crime that has a ~~direct~~  
 42 bearing on the practitioner's ability to continue to practice

C  
o  
p  
y



competently;

(3) a practitioner has knowingly violated any state statute or rule, or federal statute or regulation, regulating the profession in question;

(4) a practitioner ~~has continued to practice although the practitioner~~ has become unfit to practice due to:

(A) professional incompetence that:

(i) may include the undertaking of professional activities that the practitioner is not qualified by training or experience to undertake; and

(ii) does not include activities performed under IC 16-21-2-9;

(B) failure to keep abreast of current professional theory or practice;

(C) physical or mental disability; or

(D) addiction to, abuse of, or severe dependency upon alcohol or other drugs that endanger the public by impairing a practitioner's ability to practice safely;

(5) a practitioner has engaged in a course of lewd or immoral conduct in connection with the delivery of services to the public;

(6) a practitioner has allowed the practitioner's name or a license issued under this chapter to be used in connection with an individual who renders services beyond the scope of that individual's training, experience, or competence;

(7) a practitioner has had disciplinary action taken against the practitioner or the practitioner's license to practice in any other state or jurisdiction on grounds similar to those under this chapter;

(8) a practitioner has diverted:

(A) a legend drug (as defined in IC 16-18-2-199); or

(B) any other drug or device issued under a drug order (as defined in IC 16-42-19-3) for another person;

(9) a practitioner, except as otherwise provided by law, has knowingly prescribed, sold, or administered any drug classified as a narcotic, addicting, or dangerous drug to a habitue or addict;

(10) a practitioner has failed to comply with an order imposing a sanction under section 9 of this chapter;

(11) a practitioner has engaged in sexual contact with a patient under the practitioner's care or has used the practitioner-patient relationship to solicit sexual contact with a patient under the practitioner's care; ~~or~~

(12) a practitioner who is a participating provider of a health

C  
O  
P  
Y



1 maintenance organization has knowingly collected or attempted  
 2 to collect from a subscriber or enrollee of the health maintenance  
 3 organization any sums that are owed by the health maintenance  
 4 organization;

5 **(13) a practitioner has failed to:**

6 **(A) maintain minimal standards applicable to the selection**  
 7 **or administration of drugs; or**

8 **(B) employ acceptable scientific methods in the selection of**  
 9 **drugs or other modalities for treatment of disease;**

10 **(14) a practitioner has had clinical privileges revoked,**  
 11 **suspended, restricted, reduced, or terminated by the United**  
 12 **States Department of Defense or the United States**  
 13 **Department of Veterans Affairs;**

14 **(15) a practitioner has had a certification of registration to**  
 15 **prescribe drugs terminated or suspended by the federal Drug**  
 16 **Enforcement Administration; or**

17 **(16) a practitioner has been terminated or suspended from**  
 18 **participation in the Medicare or Medicaid programs by the**  
 19 **United States Department of Health and Human Services or**  
 20 **another responsible governmental agency for an act that**  
 21 **would be a violation of this section.**

22 (b) A practitioner who provides health care services to the  
 23 practitioner's spouse is not subject to disciplinary action under  
 24 subsection (a)(11).

25 (c) A certified copy of the record of disciplinary action is conclusive  
 26 evidence of the other jurisdiction's disciplinary action under subsection  
 27 (a)(7).

28 SECTION 5. IC 25-1-9-9 IS AMENDED TO READ AS FOLLOWS  
 29 [EFFECTIVE JULY 1, 2005]: Sec. 9. (a) The board may impose any  
 30 of the following sanctions, singly or in combination, if it finds that a  
 31 practitioner is subject to disciplinary sanctions under section 4, 5, 6,  
 32 6.7, or 6.9 of this chapter or IC 25-1-5-4:

33 (1) Permanently revoke a practitioner's license.

34 (2) Suspend a practitioner's license.

35 (3) Censure a practitioner.

36 (4) Issue a letter of reprimand.

37 (5) Place a practitioner on probation status and require the  
 38 practitioner to:

39 (A) report regularly to the board upon the matters that are the  
 40 basis of probation;

41 (B) limit practice to those areas prescribed by the board;

42 (C) continue or renew professional education under a

C  
o  
p  
y



preceptor, or as otherwise directed or approved by the board, until a satisfactory degree of skill has been attained in those areas that are the basis of the probation; or

(D) perform or refrain from performing any acts, including community restitution or service without compensation, that the board considers appropriate to the public interest or to the rehabilitation or treatment of the practitioner.

(6) Assess a fine against the practitioner in an amount not to exceed **the following:**

**(A) Except as provided in clause (B), one thousand dollars (\$1,000) for each violation listed in section 4 of this chapter, except for a finding of incompetency due to a physical or mental disability.**

**(B) Five thousand dollars (\$5,000) for each violation of section 4(a)(10) of this chapter, except for a finding of incompetency due to a physical or mental disability.**

When imposing a fine, the board shall consider a practitioner's ability to pay the amount assessed. If the practitioner fails to pay the fine within the time specified by the board, the board may suspend the practitioner's license without additional proceedings.

However, a suspension may not be imposed if the sole basis for the suspension is the practitioner's inability to pay a fine.

(b) The board may withdraw or modify the probation under subsection (a)(5) if it finds, after a hearing, that the deficiency that required disciplinary action has been remedied, or that changed circumstances warrant a modification of the order.

SECTION 6. IC 25-1-9-20 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 20. (a) If a practitioner has been convicted of, entered a guilty plea to, or entered a plea of nolo contendere to a felony or Class A misdemeanor violation of IC 9-30-5, IC 35-42, IC 35-43, IC 35-45, or IC 35-48, the prosecuting attorney in the case shall promptly notify the board of the conviction or plea. The notice to the board must include the practitioner's name and address, the nature of the offense, and the certified court documents recording the action.**

**(b) The prosecuting attorney may notify the board of the conviction, guilty plea, or plea of nolo contendere of a practitioner for a crime not listed in subsection (a).**

**(c) Not more than thirty (30) days after receipt of the prosecutor's notification under subsection (b), the board shall consider whether:**

C  
o  
p  
y



1           (1) the practitioner has become unfit to practice under section  
2           4 of this chapter; and

3           (2) a complaint should be filed under IC 25-1-7-4.

4           (d) If the board determines under subsection (c) that a  
5           complaint should be filed, the board shall report the matter under  
6           IC 25-1-7 to the division of consumer protection within the office  
7           of the attorney general.

8           (e) The board may designate a board member or staff member  
9           to act on behalf of the board under this section.

**C  
o  
p  
y**

